

North Carolina

of the ~~deeds~~

Supreme Court. January Term 1868

The State vs Thomas Drury.

Pearson, Mr J. - This case as it now comes up, presents but few points; and, no one of them, calls for much discussion.

1st. - In the argument, the point made upon the evidence offered to the Court, as preliminary to the admissibility of the acts & declarations of Ann Merton, in evidence to the jury against the prisoner, - was treated, as if the question before this Court, was, in regard to the sufficiency of the evidence to establish the fact of an agreement between Ann Merton and the prisoner, to compass the death of Laura Foster: whereas this Court is confined to the question, was there any evidence tending to establish that fact? If so, his Honor's decision as to its sufficiency was a question of fact, which we cannot review. Looking at it in this point of view, it must be conceded that the point is against the prisoner.

2^d. "His Honor erred in receiving as evidence to himself, the declarations of Ann Merton; to wit: the message & instructions given by her to the little girl, sent by her to the prisoner." It does not appear on the record that this evidence was objected to, as inadmissible; but, suppose it was objected to, we are of opinion that it was admissible on the ground that altho' waked declarations of one are not admissible against the other, to show an agency or an agreement; yet, this was not a naked declaration, like an admission or confession, but was a part of the act, & indeed, the most important part of it.

3^d. "The words used by Laura Foster, ought not to have been received as evidence." We think that the evidence was admissible, as a part of the act;